

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 04-80370

Plaintiff,

DISTRICT JUDGE JOHN CORBETT O'MEARA

v.

MAGISTRATE JUDGE DONALD A. SCHEER

ALI ABDUL-KARIM FARHAT, et al.,

Defendants.

/

**ORDER GRANTING DEFENDANTS' VARIOUS
MOTIONS REGARDING ACCESS TO
DISCOVERY MATERIALS**

The Indictment in this case charges seventeen defendants in 56 Counts with various violations of the United States Code, including Conspiracy to Defraud the United States, Bank Fraud, Money Laundering and Attempt and Conspiracy to Commit Mail Fraud. Eleven of the seventeen defendants are represented by appointed counsel. The original Indictment was filed on April 26, 2004. Despite the passage of sixteen months, several defendants have filed, or joined in, motions asserting that the government has improperly restricted their access to materials which they are entitled to review and copy. In response, the attorneys for the government maintain that the United States is without sufficient personnel to allow defense counsel unrestricted access to the discovery materials.

Following a hearing on August 2, 2005, the undersigned magistrate judge directed the parties to investigate the feasibility and cost of copying documentary materials now in the possession of the government to a compact disc which could be reproduced and provided to counsel for each defendant. In response to the order, the parties have advised the court that the cost of copying the approximately 80,000 pages would be \$13,000.00.

In addition to the monetary cost, the process of copying all of the materials would require a considerable expenditure of time.

Government counsel represented at the hearing that the vast majority of the documentary materials in question will not be offered as evidence in the prosecution case in chief. It also appears that the majority of the documents are unlikely to be material to the defense of any individual defendant. Nonetheless, it is further conceded that much of the material was seized from the various defendants, and that individual defense counsel may determine that some of the documents may be material to the preparation of a defense.

Based upon the representations of counsel, I find that an order directing the government to provide a copy of all documents in its possession to each defendant is unwarranted. Nonetheless, the government has an affirmative duty to permit the defendants to inspect and copy or photograph such books, papers, documents, data, photographs or other tangible evidence within its possession, custody and control if: 1) the item is material to the preparation of a defense; 2) the government intends to use the item in its case in chief at trial; or 3) the item was obtained from or belongs to the defendant. In an effort to enforce that obligation, while at the same time minimizing the burden and expense attendant upon its fulfilment, the court orders as follows:

1. The government shall provide access by any defense counsel of record to the entirety of the documentary or other tangible evidence in this case, upon two business days notice in writing, between the hours of 9:00 a.m. and 5:00 p.m. on regular business days, for a period of sixty (60) days from the date of this Order.
2. The government shall provide to counsel for each defendant a copy of any document or other tangible item which the government intends to use in its case in chief at trial.
3. The government shall permit counsel for each defendant to copy, or designate

for copying, any document or other tangible item in the possession of the government which was obtained from or belongs to the defendant, or which counsel for the defendant determines is material to the preparation of a defense.

4. All defense counsel shall complete their review of the documents or other tangible evidence in the possession of the government within sixty (60) days from the date of this Order. No extension will be granted except upon good cause.

IT IS FURTHER ORDERED that the government shall permit defense counsel to bring portable copying equipment to the evidence review for use in copying any item which is determined to be material.

All of which is ordered this 6th day of September, 2005.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify on September 6, 2005 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on September 6, 2005. **Lawrence Bunting, James Hoare, Donald Ferris, Daniel Garber, William Winters, Thomas Warshaw..**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217